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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 437

BENJAMIN JOSEPH MILES AND MYRTLE LETT MILES, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The Court of Appeals did not render an opinion.

JURISDICTION

The judgment of the Court of Appeals was entered October 14, 1948 (R. 95). On November 8, 1948, Mr. Justice Reed extended the time for filing a petition for a writ of certiorari to and including November 30 (R. 97). The petition was filed November 29, 1948. The jurisdiction of this

Court is invoked under 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the evidence established that petitioners participated in the conspiracy prior to its termination.

2. Whether there was error in the trial court's instructions to the jury.

STATUTE INVOLVED

The Act of June 25, 1910, c. 395, 36 Stat. 825, 18 U. S. C. (1946 ed.) 398, 399, commonly known as the Mann Act, provided:

> SEC. 2. That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, * * * shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.
>
> SEC. 3. That any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or aid or assist in persuading, inducing, enticing, or coercing any woman or girl to go from one place to another in

interstate or foreign commerce, or in any Territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any Territory or the District of Columbia, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than five thousand dollars or by imprisonment for a term not exceeding five years, or by both such fine and imprisonment, in the discretion of the court.

STATEMENT

The first count of an indictment returned in the District Court for the Eastern District of Michigan (R. 1–4) charged that on or about October 3, 1946, Ronald Woodling, alias Ronald Bradley, transported, caused to be transported, and aided and assisted in obtaining transportation for Loretta Ann McDonald from Detroit, Michigan, to Columbus, Ohio, for the purpose of prostitution, in violation of Section 2 of the Mann Act (R. 1). The second count charged that from October 1 to on or about October 3, 1946, Ronald Woodling,

Kay Woodling, alias Kay Nordberg, and petitioners conspired to violate Section 3 of the Mann Act by persuading, inducing and enticing Loretta McDonald to go from Detroit to Columbus for the purpose of prostitution, thereby causing her to be transported between those two cities as a passenger upon the route of a common carrier. Frank Glassman was named as a co-conspirator in this count but was not indicted. (R. 1–2.) The third count charged the same defendants with a substantive violation of Section 3 (R. 3–4).

The jury found Ronald Woodling guilty on all three counts, Kay Woodling guilty on counts 2 and 3, and petitioners guilty on count 2 (R. 5, 88). Petitioners were each sentenced to two years' imprisonment and fined $5,000 (R. 6, 7) and their convictions were affirmed on appeal, without opinion (R. 95).

Loretta Ann McDonald was a young girl, 16 years old, who, in June or July 1946, had been persuaded by Ronald Woodling to become a prostitute in Detroit (R. 13–15). Kay Woodling was a prostitute who married Ronald Woodling shortly after the offenses involved in this case (R. 35, 36, 45). Petitioners were the operators of a brothel in Columbus, a business in which they had been engaged for 40 years (R. 50, 52).

During the summer of 1946 Kay Woodling had been intimate with Frank Glassman, whose nickname was "Peck" (R. 37), and who was in the taxi business in Columbus (R. 35). Glassman

testified that some time during September of that year she told him that she was going to Chicago or Detroit and "go back into the racket" (R. 36). About October 1, 1946, Kay went from Detroit, where she was then living, to Columbus to see Glassman. She told him that she had met Ronald Woodling, that he was a nice fellow, and that if she could place a girl for Woodling he would give her an apartment in Detroit. She asked if Glassman knew Benny Miles and said "she would rather Benny had this girl because she wasn't very smart." (R. 35–36.) Kay returned to Detroit the same day and at about 9:00 p. m. she called Glassman and asked him to call Benny Miles "with reference to placing this girl for Ronnie." Glassman called Miles and told him that "a girl named Kay from Detroit called and said she would like to place a girl." Miles told Glassman, "Okay, send her; but first she will have to have a physical." At the same time Miles gave Glassman his address as 2440 Groveport Pike, Columbus. About a half hour later Kay called Glassman again and he told her that Miles had said, "okay, send her." (R. 36–37.)

On October 2, Ronald Woodling told Loretta McDonald that she was going to Columbus, Ohio, the following day. That night he gave her $10 for train fare and a slip of paper on which was written, "Benny Miles, 2440 Groveport Pike," and a phone number, together with a message Loretta was to give Miles; the message was, "I'm

Billie. Peck sent me." Woodling put Loretta on the train at the Michigan Central Station in Detroit on October 3 at 1 p. m. She arrived in Columbus about 6:30 and went directly to the address given on the slip of paper. There she was met by petitioner Myrtle Miles, who admitted her, saying, "Come in, we have been expecting you, Billie."[1] Benjamin Miles told Loretta that he had not expected her for twelve hours and asked why she had not gone to "Peck's place." Myrtle Miles told Loretta at this time that there was another girl from Detroit at the house and introduced her to the girl. (R. 15–17.) Both petitioners explained to Loretta what prices were charged to the patrons of the house and that certain old customers, referred to as "neighbors," were entitled to the rate of $3. They also explained the method by which the fees obtained were to be divided. (R. 18.)

The following day, Friday, October 4, Loretta went to the office of one Dr. Brown, where she was examined and given a slip of paper which she gave to Benjamin Miles. She worked at petitioners' house until the following Tuesday, which was her day off. Petitioners warned her not to tell customers that she was "from out of the State of Ohio as one of the men might be an F. B. I. man or one of them might start talking to them."

[1] In accordance with her instructions from Woodling, Loretta destroyed the paper after her arrival at petitioners' house (R. 15).

Loretta was not permitted to make a long distance telephone call to Ronald Woodling from petitioners' house, "because the Federals might trace the call." (R. 18.)

Petitioners also told Loretta that "the cops were hot on their trail" and that they were going to close on Tuesday. Loretta called Ronald Woodling and he later went to Columbus, picked her up at petitioners' house, and placed her in the house of Bobby Adams in Columbus, where she worked for one night. (R. 19.)

ARGUMENT

1. Petitioners contend (Pet. 22–29) that the substantive offense of inducing Loretta McDonald to go from Detroit to Columbus for the purpose of prostitution was complete the moment Loretta crossed the Michigan-Ohio line on October 3, 1946; that the conspiracy therefore terminated at the same time; that the evidence showed that their first contact with the other conspirators was the phone call from Glassman and that this occurred after Loretta had crossed the state line; *ergo,* that the proof was insufficient to establish that they joined or participated in an existing conspiracy.

The legal premise of this argument is, of course, untenable, for the conspiracy continued at least until Loretta arrived at her destination—petitioners' brothel in Columbus—and we assume that petitioners would concede that the proof showed they joined the conspiracy before that time.

The factual premise of the contention is negated by the record. It is pitched upon petitioner Benjamin Miles' pre-trial statement to agents of the F. B. I., which was introduced by the Government, that Loretta arrived at his brothel the "same evening" that Miles received the telephone call from Glassman asking if he could use a girl (R. 52). Petitioners argue that since Glassman in his testimony did not fix the exact date of the call, and since Loretta left Detroit at 1:00 p. m. on October 3, it must be taken as established by Miles' statement that she had already crossed the state line, one hour travel time from Detroit, before Glassman called him (Pet. 23–24). It is true that Glassman testified that his conversations with Kay Woodling in Columbus and by phone in Detroit and his call to Miles at Kay's request (see p. 5, *supra*) occurred "around the first of October 1946" (R. 36). But the chronology of events as related by Glassman and Loretta McDonald—Kay Woodling's statement to Glassman in Columbus that she wanted to place a girl for Ronald Woodling and preferred to place her in Benny Miles' house; Kay's call later the same day after she had returned to Detroit asking Glassman to call Miles; Glassman's ensuing telephone conversation with Miles when Glassman said that "Kay" had called from Detroit and wanted to place a girl and Miles said to "send her"; Ronald Woodling's statements to Loretta in Detroit on October 2 that she was going to Colum-

bus the next day and his action in dispatching her on October 3 with a note bearing Miles' address and telephone number and the message, "Peck [Glassman] sent me"; petitioner Myrtle Miles' statement to Loretta upon her arrival that they had been expecting her, and her introduction to "another girl from Detroit" who was at petitioners' house—all point inevitably to the conclusion that Glassman's call to Miles and Miles' agreement to take Loretta into his brothel occurred on October 1 or 2, before she left Detroit. Indeed, petitioners' prior agreement was indispensable to the consummation of the Woodlings' plan to place Loretta in petitioners' house. The evidence plainly shows that petitioners knew Loretta was coming and whence she came; that they became parties to the conspiracy to send Loretta to Columbus to engage in prostitution almost at its inception.[2]

[2] In this connection, petitioners complain of testimony concerning acts and declarations which occurred after October 3, 1946 (Pet. 26). Loretta McDonald's testimony that petitioner Myrtle Miles told her immediately upon her arrival on October 3 that there was another girl from Detroit at the house (*supra*, p. 6), which petitioners include among the allegedly inadmissible evidence, was clearly admissible as showing petitioners' knowledge that Loretta had come from Detroit pursuant to the conspiracy. Loretta's testimony that petitioners later cautioned her about telling patrons that she was from out of the State and that she was not permitted to use the telephone to call Woodling in Detroit because the call might be traced was also admissible as showing petitioners' knowledge and intent. See *Kulp* v. *United States*, 210 Fed. 249 (C. C. A. 3). However, this latter testimony,

2. Isolating six paragraphs from the trial court's charge to the jury of approximately twenty-eight pages, petitioners contend that they embody five fundamental errors of law which resulted in denying them a fair trial (Pet. 4–5, 29–31). But petitioners did not make any such objections at the conclusion of the court's initial charge nor at the conclusion of the supplementary charge given as a result of suggestions by counsel for the other defendants (see R. 85–86, 87); their present contentions, therefore, come too late. Rule 30, F. R. Crim. P.; *United States* v. *Monroe*, 164 F. 2d 471 (C. C. A. 2); *United States* v. *Wilson*, 154 F. 2d 802 (C. C. A. 2); *Cave* v. *United States*, 159 F. 2d 464 (C. C. A. 8).

In any event, petitioners' criticisms of the charge are without merit.

They complain that the court omitted any reference to the requirement of transportation by common carrier. The objection is frivolous, for the court instructed the jury that it had been stipulated that the New York Central railroad

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as well as evidence concerning Loretta's visit to the doctor on October 4, 1946, her quarrel with another girl at petitioners' house (R. 19), the termination of her stay at the house, and her subsequent employment at Bobby Adams' house, was withdrawn from the jury's consideration on the issue of petitioners' guilt on the conspiracy count by the court's instruction that the jury was not to consider as against them "any evidence relating to events which occurred prior to October 1, 1946, nor subsequent to October 3, 1946" (R. 82).

is a common carrier.[3] A few paragraphs later the court alluded to the transportation element of the conspiracy count, stating that the case involved a conspiracy to induce the transportation for immoral purposes, and "That is the first element, an object to be accomplished" (R. 66). The supplemental charge also specifically covered this point. After reading Section 3 of the Mann Act, 18 U. S. C. 399, in its entirety, the court said (R. 87):

> Also I charge you that it is unnecessary to show control of the medium of transportation by the different members of the conspiracy. It is sufficient if the co-conspirators knew or should have known that interstate transportation by common carrier would reasonably result and if it does.

Petitioners contend that the portion of the charge in which the jury was instructed concerning the duration of a conspiracy constituted prejudicial error in view of the legal principles announced by this Court in previous cases. While the court charged that a conspiracy continues until consummated or until the accomplishment

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[3] The charge in this regard reads (R. 66): "Now, it has been agreed upon here that the New York Central Railroad is a common carrier, and no proof was submitted, except the stipulation of counsel. It that a correct statement?

"Mr. Thornton: Yes, Your Honor.

"Mr. Hopping [counsel for petitioners]: Yes, Your Honor.

"Mr. Comb: Yes, Sir."

of its object and that the question is one of fact to be resolved by common sense and human observation and experience, the jury were also instructed that all evidence relating to events which occurred prior to October 1, 1946, and subsequent to October 3, 1946, was not to be considered as against petitioners in determining their guilt or innocence on the conspiracy count (R. 82). Thus, petitioners have no basis for complaint, since under this instruction the jury was not permitted to consider evidence of incidents which occurred after the day Loretta McDonald reached the destination of her interstate journey, i. e., petitioners' brothel.

Petitioners assert that the trial court erred in neglecting to instruct the jury that one defendant alone could be found guilty on the conspiracy count,[4] since the count also referred to "other persons to the Grand Jurors unknown" (R. 2). But in view of the fact that there were four defendants on trial on the conspiracy count and all were convicted, it is difficult to understand how the charge in this respect could have resulted in any detriment to either petitioner. Under the charge as given, the jury could have acquitted either or both of the petitioners if they had thought it proper.

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[4] The court's specific instruction on this score was as follows (R. 85):

"The second count is a conspiracy charge. You can find all of the defendants guilty. Your verdict can be that they are all guilty, or none guilty; or that two or more are guilty."

Petitioners have construed two sentences of the charge to mean that the jury were told that the conduct of any of the conspirators might be considered as bearing upon the criminal intent of any and all. This is not only a misconstruction of the fair meaning of the language employed in the two sentences to which reference is made (Pet. 4–5), but it also ignores other portions of the instructions relating to criminal intent (R. 69–70, 75). The wording of the two challenged sentences, when considered with other portions of the charge, can have no other meaning than that the acts, conduct, declarations, and admissions of each defendant might be considered to establish intent as to the defendant who performed the acts or made the declarations or admissions. Furthermore, when the charge is considered in its entirety it is apparent that the jury were fully instructed as to the importance of criminal intent and the manner in which it could be determined. The jury were told there must be criminal intent to violate the law, that intent might be established by circumstantial evidence, that there must be a concurrence of acts and intent, and that they were to "consider all these facts and circumstances of the case which touch the conduct of the particular defendant or defendants, as well as all the evidence introduced by the Government concerning any of the defendants' declarations or admissions, if believed by you and sufficiently proven." (R. 75.)

Finally, petitioners contend that it was prejudicial to charge the jury that it was immaterial whether Loretta McDonald went to Columbus of her own free will. But this was a correct statement of the law. See e. g., *United States* v. *Reed,* 96 F. 2d 785 (C. C. A. 2), certiorari denied, 305 U. S. 612; *United States* v. *Reginelli,* 133 F. 2d 595 (C. C. A. 3), certiorari denied, 318 U. S. 783.

CONCLUSION

The judgment below is correct and the case presents no conflict of decisions. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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